

Factors Impacting Offshore Company Activities after the EU Enlargement

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The article deals with the offshore centre activities in the European Union economic area and their role in the international trade. The offshore centre activities are analyzed taking into account the offshore companies registered in the former colonies of the European Union member-states. The changes in activities of the offshore companies registered on the territory of the European Union are examined within the context of the European Union enlargement.

There is no clearly and officially stated position of the European Union governing bodies on the offshore centres and on the real assumptions on their process development non-conformities.

The new European Union member-states have had to limit the activities of the offshore centres that were established on their territories including Cyprus, Malta, Hungary and others. It should be noted that the offshore centre in Cyprus had been very popular among Russian businessmen until Cyprus became a member of the European Union. In spite of that, some of the European Union member-states have preserved the opportunity to use offshore centres that were established on the non-European Union territories. Both in Lithuania and Latvia, the offshore centres that are registered in various states of the USA like Delaware, Wyoming, Kentucky, are still very popular. According to the Lithuanian legal acts, these offshore centres are not considered to be the territories where the tax rates are lower than in Lithuania and the tax tariff of 29 per cent is not applicable to them. The rapid development of the US operating offshore centres has been observed by other authors who claim that the majority of the offshore companies were registered in the Caribbean Sea region and the Western European states. Alongside these regions, the offshore jurisdiction zone has been expanding in the states of the Asia/Pacific region.

Objective of the article – analyze factors impacting the activities of the offshore centres after the enlargement of the European Union.

Although the official position of the European Union towards offshore centres and their activity is negative, some states of the European Union establish offshore centres in their territories. Being the members of the EU states, Lithuania businessmen enjoy favourable conditions to carry out their activities through the offshore centres registered in the USA. Having analyzed the entrance time of various states into the OECD organization, the conclusion may be drawn: new members are accepted to this organization paying no attention to the fact whether the state has already established the offshore centre in its territory or not before joining the OECD

organization. Among offshore centres, that are to undergo sanctions, there are states that do not belong to the Organization of Economic Development and Cooperation. Furthermore, this is acts as the mean to reduce competition among offshore centres.

Keywords: offshore centres, Europe Union.

Introduction

Though the European Union states through OECD (Organization for Economic Cooperation and Development) declare in public that they are fighting against the states, which have got operating offshore centres on their territories, they have the same type of centres on their territories, e.g., Virgin Islands of Great Britain, San Marin and others. The new European Union member-states have had to limit the activities of the offshore centres that were established on their territories including Cyprus, Malta, Hungary and others. It should be noted that the offshore centre in Cyprus had been very popular among Russian businessmen until Cyprus became a member of the European Union. In spite of that, some of the European Union member-states have preserved the opportunity to use offshore centres that were established on the non-European Union territories. Both in Lithuania and Latvia, the offshore centres that are registered in various states of the USA like Delaware, Wyoming, Kentucky, are still very popular. According to the Lithuanian legal acts, these offshore centres are not considered to be the territories where the tax rates are lower than in Lithuania and the tax tariff of 29 per cent is not applicable to them. An offshore centre can be called a foreign territory where companies are registered based on local legal acts and are released from taxes common for developed countries if their activities are carried out beyond this offshore centre and the state where it was registered (if an offshore centre is not established on the whole territory of the state) boundaries (Snieška and Gaidelys, 2004).

The rapid development of the US operating offshore centres has been observed by other authors who claim that the majority of the offshore companies were registered in the Caribbean Sea region and the Western European states. Recently, the USA has been catching up with these areas by registering several thousand offshore enterprises every year. Alongside these regions, the offshore jurisdiction zone has been expanding in the states of the Asia/Pacific region. Under the data submitted by some scholars, a half of the states worldwide do not collect any taxes or very small ones from the companies that are registered on their territories but do not operate there

(Пеннер, 1999).

Other authors write that currently there are about one hundred offshore centres where offshore companies can be registered. However, it has also been admitted that in most cases these centres have not got the traditional set of characteristics assigned to offshore companies (Stungys and others, 2001).

Favourable business environment had a great impact on the popularity of the offshore centres. Strategic industries started using their services. The fact, which implied indirectly big countries' interest in the offshore prosperity, was noted by the US journal "Business & Commercial Aviation". In its issue of February 2002, it supplies information on the conference and exhibition held by the US aviation industry where diagnostic and control systems were exhibited. As the authors of the article point out, those systems were acquired by one offshore company dealing with the technical services to aviation companies (Offshore Logistics Inc., 2002).

At present, the European Union is in the process of establishing the common defence system, which was attempted to be set up already in 1954 and which was rejected by the French National Assembly on August 30 of the same year. This organizational structure should have been called the European Defence Community (EDC). Meanwhile, the European Defence Agency (EDA) was established in July 2004. Moreover, the European Union military forces were criticized for their obsolete equipment and old-fashioned military devices, which was clearly proved in the Iraqi war. Therefore, it is very important to know what military orders will be put to which companies in updating the European Union military equipment. Namely, the offshore companies might play an important role in the acquisition of this equipment having in mind that most commonly military orders are state secrets and the offshore company activities are based on not disclosing the information about their owners.

Though, after the enlargement of the European Union, the amount of business carried through the offshore companies by the European businessmen has not changed greatly, the list of the offshore companies has been updated. In other words, the European Union member-state businessmen, who work through offshore centres, have not started paying higher taxes.

Such actions of the European Union businessmen may provide conditions for both legal tax payment planning and the use of offshore centres to avoid taxes (Sutton, Payne, 1994). Other authors point out directly that all activities through offshore centres may be related to money laundering, and this fact should be one of the most important tasks of the European Union in solving the issue (Hakamies, 1999).

Problem. There is no clearly and officially stated position of the European Union governing bodies on the offshore centres and on the real assumptions on their process development non-conformities.

Objective of the article – analyze factors impacting the activities of the offshore centres after the enlargement of the European Union.

Research methods – data analysis of taxation and other involved institutions; analysis of data from research

papers, the European Union institutions and other publicly available information resources.

Activity problems of offshore companies in the European Union

Many authors investigated the legitimacy of the offshore companies activities and arising problems of illegally received money legitimization, in other words, "money laundering". However, problems related to the confidentiality of the offshore company activities remain till now. The problems of the lack of the offshore centre control were analyzed at the international conference in 2001. L. Komisar, one of its participants, in his presentation highlighted the necessity to control the offshore centre activities and thus introduce the appropriate regulatory legal acts (Komisar, 2001).

Therefore, every time separate organizations and states defending their strategic interests express their initiative to make pressure on various offshore centres. As far back as 1973, the European Union demonstrated such initiative regarding Luxemburg. That initiative was focused on holding companies that operated in Luxemburg and were in great demand on the offshore company sales market. After dealing with that problem, the European Union Commission concluded that it was necessary to investigate not only the activities of Luxemburg but also of Jersey, Guernsey, Man and other islands. The Commission also concluded that the restrictions imposed on tax abating countries would stimulate the capital flow beyond community borders (Апель and others, 2002). Here we are facing one more problem, namely, the capital run from the European Union states, and it is not due to the offshore company activities; it is a global issue of general capital run from the old Europe. It involves production process transfer from the European countries to Asia, and primarily to China. Moreover, it means the import of cheap goods from there to the European Union states.

The problems are related to the difference in taxes between the European Union and the offshore centres, to be more exact, to their scope or their complete absence. C. Radaelli (1999) analyzed the problems of taxation in the European Union paying particular attention to the taxation systems of the offshore centres. Other authors state that some Western European states have already implemented certain measures to defend their interests. One of them is mandatory inspection of agreements drawn between country residents and offshore centres carried out by taxation institutions (in majority of the European states). If such agreements are not single, the country resident is investigated very thoroughly. Besides, all bank transfers to offshore companies are charged with additional fees in some states (Апель and others, 2002). However, as it has been noted, these actions might have negative consequences to the European Union economy and to the capital run from the country in particular.

Even though various criminal and terrorist structures have possibility to use offshore centre services, some authors indicate that European countries have achieved significant results in controlling the offshore centre services to their citizens (Апель and others, 2002).

Impact of International organizations

The increasing impact of the offshore centres is demonstrated by the changes that take place in the OECD – Organization for Economic Co-operation and Development. It was established in Paris 14 December 1960 by signing a convention that came into effect 30 September 1961. In its reports, the OECD presents its goals as follows (OECD, 1999):

- Aim at maximum stable economic growth, occupation and living standard increase in organization state-members, which contribute to financial stability and ensure global economic development.
- Mediate economic growth not only in member-states but also in the states that are not members and do not participate in economic growth stimulation process.
- Mediate in expanding international trade based on multilateral non-discrimination and international obligations.

At the beginning, Austria, Belgium, Holland, Norway, Portugal, Germany, Greece, Iceland, Ireland, Canada, Denmark, France, Italy, Luxemburg, Spain, Sweden, Switzerland, Turkey, Great Britain and the United States are the members of OECD. Other states became the members of OECD in the following order: Japan (28 April 1964), Finland (28 January 1969), Australia (7 June 1971), New Zealand (29 May 1973), Mexico (18 May 1994), Czech Republic (21 December 1995), Hungary (7 May 1996), Poland (22 November 1996) and Korea (12 December 1996). Besides, the European Union Commission participates in OECD.

Some authors indicate that OECD strives to reduce competition caused by the offshore centre offered services that charge minimum fees or no fees at all. As powerful industrial states belong to the OECD, they try to achieve their self-seeking goals (Пеннер, 2002).

After the analysis of various state acceptance time to the OECD, it can be concluded that the members were accepted without taking into consideration the fact whether the accepted member had had any established offshore centre on its territory before joining the OECD. As an example, the United States can be mentioned where the main acts regulating the activities of enterprises managed from abroad had been passed before 31 September 1961 like Federal Trade Commission Act in 1914; Clayton Act in 1916; Shipping Act in 1916; Edge Act in 1919; Securities Act in 1933; Foreign Zone Trade Act in 1934; Investment Company Act in 1940; Bank Holding Company Act in 1956, etc. Actually the United States have been passing acts regulating the activities of current offshore centres since the beginning of the last century.

Certainly there are cases when the states had had offshore centres on their territories before joining the OECD. As a matter of fact, Hungary established an offshore centre on its territory in 1988 (Act on Establishing Economic Communities No. 6 and Act on Foreign Investments No. 24) though it became an OECD member on 7 May 1996.

Taking the above-mentioned facts into consideration,

it can be concluded that a part of the member – states of the OECD has been making use of offshore centre services and, moreover, have been establishing that kind of centres on their territories. Such states are the United States (State of Delaware), the United Kingdom (Virgin Islands), France (Djibouti), Switzerland, Ireland, Luxemburg and others. It should be noted that the establishment of offshore centres became very active after the collapse of the Soviet Union. Very broad use of the offshore centre services was observed among less developed countries. For example, one Brazilian politician (Paulo Maluf) opened a secret account at Jersey offshore centre where illegally acquired money was transferred (Ernest, McCrary, 2002).

Our analysis allows us to state that it can be related to market expansion in former Soviet block countries and the need to legalize money received during the processes of the state enterprise privatization and the so-called transformation period.

According to J. Pepper, the OECD has prepared a list of the states that have got harmful taxation systems (Пеннер, 2002): Andorra, Anguilla, Aruba, Bahrain, Barbados, Belize, Bahamas, British Virgin Islands, Cook Islands, Dominican Republic, Gibraltar, Grenada, Guernsey, Man Isle, Jersey, Liberia, Liechtenstein, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, the Antilles of the Netherlands, Panama, Samoa, the Seychelles, St. Lucia, St. Christopher and Nevis, St. Vincent and the Grenadines, Tonga, Turks and Caicos, American Virgin Islands, Vanuatu.

The OECD officially advised to the above-listed offshore centres to present to the OECD the legally based amendment plans till 1 June 2001. For those who refused to do that, the OECD planned to impose the following sanctions (Пеннер, 2002):

- Interdict other states to reduce expenses and income to cost prices from non-cooperating offshore centres;
- Request full contractual accountability from offshore centre employees; for those who submit wrong data or avoid reports to OECD, impose appropriate sanctions;
- Organization leaves the right to adopt regulatory basis analogous to the American one, under which a controlled offshore centre will be entitled to pay taxes to the state where a controlling person is residing;
- Introduce a tax for money transfers to residents of non-cooperating offshore centres;
- Introduce high commission fees for financial operations carried out with non-cooperating offshore centres.

The OECD promised to use these sanctions, and some offshore centres (OECD 1999) were crossed out from the presented list: Aruba, Bahrain, Men Island, The Antilles of the Netherlands, Seychelles, Tonga.

Some offshore centres directly influenced by some states belonging to the OECD organization were included into this list. Although there are no such offshore centres as the United States (State of Delaware), Cyprus (especially popular in Russia) (Кабир, 2vo2), however, in

March 21, 2002 the Russian Federal Commission of Securities signed the cooperation agreement with the Cyprus Central Bank in order to get the information about the offshore centres functioning in Cyprus and investing into Russia (Parazcreeb, 2002). However, after Cyprus had become the member of the European Union, the offshore centre of this country had to stop their activity and at present Cyprus is not considered to be an offshore centre.

According to other authors, recently most offshore centres are crossed out from the list of tax agreements, and in some states (especially in the USA and Great Britain) certain laws express rather an anti-offshore direction although the term itself might be not used (Кабир, 2002). Gibraltar states have proclaimed that since 2001, April 1 the offshore companies set up in this offshore centre should be audited and they would have to submit their balances in the period of thirteen months from the end of the accounting period. Small enterprises (possessing not more than 50 employees, and having the annual turnover exceeding not more than 2.4 million pounds) will have only to present financial reports (G. S. L. Law & Consulting, 2001). Recently the OECD organizations started to press on offshore centres which had not introduced profit tax, because, according to the OECD, billions of the USA dollars of taxes are lost in the offshore centres. The OECD requires offshore centres to carry out reforms that should make the activity of bank and financial sectors more transparent (G. S. L. Law & Consulting, 2001). However, according to some other authors, the Dublin offshore centre situated on Ireland territory had one very important advantage, i.e. a long-term economic and political stability and fully entitled membership in the European Union (Big Holdings Ltd, 200). Alongside with the mentioned international organizations, there are other organizations to which some offshore centres belong to, e.g., Nevis is a member of British commonwealth since 1983 (Dovidka, 2001).

The USA and the corporations of other countries have a significant influence on the activity of offshore centres. The capital of these corporations was significantly increased in the trade of offshore companies in 1990-1996. Some authors consider these to be linked with Securities and Exchange Commission formation. However, some offshore centres (e.g., Men Isle) enjoying partial membership in the European Union can truly trade their agricultural and industrial production with the states of the European Union, however, these offshore centres do not participate in the harmonization of tax policy (Big Holdings, 2000).

The International Organization of Economic Development and Cooperation holds that offshore centres are not useful for the economic development of states, that is why their activity and expansion are restricted. The question is why and how states create offshore zones if they are not useful.

According to R. Palan, the creation of offshore centres began when the wholesale finance market started specializing in trading debts of various state governments (Palan, 2001). J. Pepper states that the fight among clans results in the fact that some of them do not get incomes from the activity of offshore centres. This means that the clan before obtaining power will fight against the activity

of offshore centres and try to form the society opinion that is useful for them (Пеннер, 2002). Here are some examples that confirm this statement. In Nevis offshore centre known by its citizenship program there exists a strong opposition to selling passports to established investors. The argument is: local inhabitants possess 4000 visas to the USA quota, and they use them in order to go shopping to Miami; new Nevis citizens also can use this quota and this can lead to the elimination of free (without visas) entrance for all Nevis inhabitants. A very strong political opposition is felt in other, Sent Vinsent, offshore centre. The opposition has declared that offshore projects are not in the state's interests. Then the state started presenting the name of an honoured citizen to the persons who would contribute to the country's economy, or to be more exact, to the government's project and thus would make a certain contribution. The leader of the opposition declared that he would call off all the previously given passports (Пеннер, 2002).

Our research has enabled to draw the conclusion that the states themselves, or to be more exact, their representatives can be interested in the existence of offshore centres. However, it is rather strange how under such political situation, there is any possibility to speak about political stability.

According to R. Palan (2001), the development of offshore centres has made the domination of the main constituents of the development of economic life possible. The author writes that this manifests the relationship between offshore centres and the conception of state sovereignty.

These arguments confirm the existence of the aspect most states try to escape. Offshore companies have become an inherent part of the system of most states. This is confirmed by the biggest states themselves. The offshore centres have been established in economically developed states.

R. Palan states that the sovereignty conception and self-determination right can give some choice of freedom, but at same time it can limit the growth of offshore business. Moreover, the creation, sovereignty and self-determination right of offshore companies force most governments to give an opportunity to free movement of labour. The author holds that offshore centres do not reduce state sovereignty, but present a lawful definition and define different levels which some states undertake to regulate. According to the law, such branching of the two directions defines the process which takes place in relative states and their territories (Palan, 1998). However, other authors consider that defending their interests, most states use not only economic means (Апель et al, 2002). Thus, speaking about the interrelationship of states and offshore business, A. Apel concludes that in the world there is enough positive and negative experience, and it is worth studying" (Апель et al, 2002).

Having analyzed the statements of most authors, it can be said that an unconsidered reliance on another country experience might not produce expected results in other countries: concrete measures in one or the other country should be taken considering not only economic situation, but other aspects as well: intellectual peculiarities, criminal situation, development level, etc.

Some other conclusion could be drawn: the states themselves are interested that the situation would not change. However, at the same time countries themselves establish organizations and participate in the activities of the organizations fighting against offshore centres and processes that take place in them. This explains why there are difficulties in adopting law acts regulating the activity of offshore centres.

Recently when much is spoken about “the harm produced by the tax system of offshore centres on trade, and investments” (“Verslo žinios” online, 2002), the daily newspaper “Financial Times” started publishing articles about the fact that the OECD intends to introduce sanctions on nine offshore centres. These are: Andorra, Nauru, Panama and Vanuatu. The state of the Pacific Ocean Samoa Nuie can be included into the same list. This state has been crossed out as the state that has fulfilled the requirements, and in 2002, October 11 “BBC News” declared that Russia as the state that had carried out the requirements (it had adopted corresponding law acts) was crossed out from FATF states not fighting with “dirty” money laundering (BBC News, 2002). It should be stressed that Russia’s crossing out from these lists has coincided with the visit of the Prime Minister of Great Britain to Russia’s President V. Putin (ORT Новости, 2002). Moreover, at that time the USA Congress endorsed the plan presented by the USA President G. Bush about the war against Iraq (CNN News, 2002).

In November 1997, the international conference “Offshore-2000” took place in London. This conference also stimulated the resistance to the policy of offshore centres (Кабир, 2002).

“Financial Times” states that already several years the Organization of Economic Development and Cooperation requires that the mentioned states changed the tax system, however, these states refuse to do this. Thus, if the requirements were not fulfilled, the Organization of Economic Development and Cooperation is intending to call off some agreements, including those concerning double taxing avoidance among member organizations and the mentioned states that are to undergo sanctions.

Some authors notice negative tendencies in the activity of other international organization FATF. They consider FATF to conduct policy towards some offshore centres, and to be the one that will condition the closing of offshore centres (e.g., Cyprus, Bermund Islands, Kaiman Isles, Malta) in the nearest future, i.e. in 2005 (Амарина et al, 2001). The promise has been kept. Although, in some law acts, adopted by certain states, Cyprus and Malta are still considered to be offshore centres, however, in reality these members of the European Union are not offshore centres. It should be noted that the International Organization FATF, established by the big seven states and their initiative, functions in the framework of other international organization-OECD (Кабир, 2002).

The facts presented make it possible to conclude that among the offshore centres that should undergo sanctions there are the states which do not belong to the Organization of Economic Development and Cooperation. Thus, some assumptions, based on the present situation, could be made:

1. The states belonging to the Organization of Economic Development and Cooperation because of economic reasons are interested in the reduction of the number of offshore centres as this might decrease the competition in the services market of offshore centres.
2. The list comprised by the Organization of Economic Development and Cooperation includes the offshore centres in which terrorist organizations can legalize their capital obtained through illegal ways.
3. The offshore companies financing terrorist acts are set up in the territories of the mentioned offshore centres. Their activity is difficult to control. This is related to the terrorist acts against the USA on the 11th of September, 2001.
4. As at the same time when the Prime Minister, of Great Britain Tony Blair visited Russia’s President V. Putin, FATF crossed off Russia from the list of the states having no necessary law basis for the fight with “dirty” money laundering, a conclusion could be drawn that such FATF behaviour could be related to the visit of the Prime Minister of Great Britain T. Blair and the plan adopted by the USA Congress and endorsed by the USA President G. Bush (the plan of war against Iraq). Up to that time Russia had been in a hostile position as to the war in Iraq, but after T. Blair’s meeting with V. Putin that position became milder.

Regularly accumulated and systematized information about the processes taking place in the world and offshore centres economy manifest OECD organization’s advance.

G. Nicoletti, S. Scarpeta and O. Boyland (1999) state that the database of the Organization of Economic Development and Cooperation contains more than 1,100 different records dealing with the regulation processes of every state, OECD member. G. Nicoletti, S. Scarpetta and O. Boyland (1999) state that using the database possessed it will be possible to successfully solve problems.

Having analyzed the information obtained, it is possible to state that in order to control the processes taking place in offshore centres, it is obligatory to control the processes that occur not only inside one state but outside its borders as well. Thus, the necessity arises not only to control the activity of the state institutions, but to forecast certain barriers for businessmen.

It should be stressed that, according to L. Kabir, the merge of offshore and non-offshore business is quite possible because offshore centres, firstly, being pressed by international organizations and highly developed states, will have to liberalize the sector of financial services, secondly, the considerable reduction of income tax in most countries that are not offshore states will make them more attractive to the international business (Кабир, 2002). For example, according to the decision of the European Commission, the income tax in Ireland was reduced up 12.5 % till the 1st of January, 2003. It is the lowest tax in Europe (Serdinov, 2000). It has been noticed that offshore companies are often used while seeking to reduce profit tax.

Under the pressure of international organizations, since January 1, 2001 the government of the Bahamas Is-

lands has made its law basis stricter and regulated the activity of international companies registered on these islands. The law regulating the activity of international companies was adopted only in 1989, i.e. when the processes of restructuring were going on in the previous Soviet Union. Firstly, changes limit non-nominal shares, i.e. no more issues of these shares are allowed in the Bahamas Islands. Secondly, a minimal number of directors is introduced. Thus, the offshore company is to have no less than two directors, one of them being a local inhabitant. Thirdly, offshore company owners are obliged by the law to present the questionnaire data of the directors to the register of the Bahamas Islands offshore companies. Fourthly, such international companies are forbidden to carry on operations with securities (as agents) as well as to submit consulting services in the sphere of investing into securities. Moreover, there appeared a new requirement to call the meetings of the directors of the offshore companies on the Bahamas Islands, and the register tax of the offshore company increased from 250 to 350 USA dollars. All offshore companies registered up to that time are recommended to take the following actions in 180 days:

1. To prepare new laws and establishment agreements forecasting only the issue of only nominal shares.
2. To prepare the lists of shareholders with comprehensive questionnaire data and addresses for the shareholders' register.
3. To present information about the actual owners of offshore companies to the state structures of the Bahamas Islands.
4. To present the comprehensive questionnaire data and addresses of the offshore company to the structures of the state register.

According to specialists, earlier registered offshore companies change their dislocation place or simply stop their activities because of the new requirements (G.S.L. Law & Consulting, 2001).

Based on the presented information, such conclusion could be made: as total economic sovereignty is impossible, this makes influence on the state sovereignty because under economic dependence total state sovereignty is impossible. This proves the fact that some state capital companies take hold of the companies of other states whose main share package belonged to the state. Speaking about business branches having strategic importance for the state's economic and financial life, it is worth mentioning that the companies that have taken hold of foreign firms whose main stock package belongs to the state will be able to make a significant influence on the social, economic and political life of that state as well as to exert influence on the adoption of law acts.

As it has been proved by the world practice, the law institutions and intelligence services are interested in the activity of offshore centres. There are cases when the intelligence services avoiding public activities use the research material of different public institutions or they themselves order the analyses of the fields they are interested in. The experience of Lithuania while joining the European Union and some research conducted in the field may be very useful in the process of adapting Lithuanian economy to that of the European Union because along-

side with positive factors influencing Lithuania state, there are some negative facets to be studied. The knowledge of negative factors will make it possible to mitigate their consequences or even to avoid them.

Conclusions

1. Although the official position of the European Union towards offshore centres and their activity is negative, some states of the European Union establish offshore centres in their territories.
2. Being the members of the EU states, Lithuania businessmen enjoy favourable conditions to carry out their activities through the offshore centres registered in the USA.
3. Having analyzed the entrance time of various states into the OECD organization, the conclusion may be drawn: new members are accepted to this organization paying no attention to the fact whether the state has already established the offshore centre in its territory or not before joining the OECD organization.
4. Among offshore centres, that are to undergo sanctions, there are states that do not belong to the Organization of Economic Development and Cooperation. Furthermore, this is acts as the mean to reduce competition among offshore centres.

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Veiksniai, darantys įtaką ofšorinių bendrovių veiklai po Europos Sąjungos plėtos

Santrauka

Nėra aiškios oficialiai deklaruojamos Europos Sąjungos valdymo institucijų pozicijos ofšorinių centrų atžvilgiu ir realių ofšorinės veiklos procesų raidos neatitikimo prielaidos.

Straipsnio tikslas – išnagrinėti veiksnius, darančius įtaką ofšorinių bendrovių veiklai po Europos Sąjungos plėtos.

Europos Sąjungos valstybės per EBPO (Ekonominio bendradarbiavimo ir plėtos organizaciją) viešai deklaruoja kovojančios su valstybėmis, kurios savo teritorijose turi veikiančius ofšorinius centrus, tačiau pačios savo teritorijose yra įsteigusios tokių centrų (pvz., Didžiosios Britanijos Virdžinijos salos, San Marinas ir kt.). Naujosioms Europos Sąjungos narėms teko apriboti savo teritorijose įsteigtų ofšorinių centrų veiklos galimybes. Tam tarp Kipro, Maltos, Vengrijos ir kt. Pažymėtina, kad Kipro ofšorinis centras buvo itin populiarus tarp verslininkų iš Rusijos, kol Kipras tapo Europos Sąjungos nare. Nepaisant to, kai kurioms Europos Sąjungos narėms yra paliktos galimybės naudotis ofšoriniais centrais, įsteigtais ne Europos Sąjungos teritorijoje. Tiek Lietuvoje, tiek Latvijoje labai populiarūs ofšoriniai centrai, registruoti JAV Delavero, Vajomingo, Kentukio bei kitose valstybose. Būtent šie ofšoriniai centrai Lietuvoje priimtuose teisės aktuose nėra laikomi teritorijomis, kuriose mokesčiai yra mažesni nei Lietuvoje, ir todėl nėra apmokestinami 29 proc. tarifu. Ofšoriniu centru galima vadinti užsienio teritoriją, kurioje registruotos įmonės, remiantis ten galiojančiais teisės aktais, yra atleidžiamos nuo įprastų (išvystytos ekonomikos šalyse) mokesčių mokėjimo tada, kai tos įmonės savo veiklą vykdo už ribų to ofšorinio centro ir valstybės (jeigu ofšorinis centras įsteigtas ne visoje valstybės teritorijoje), kurioje ji yra registruota (Snieška ir Gaidelys, 2004).

JAV veikiančių ofšorinių centrų sparčią plėtrą pastebėjo ir kiti autoriai; jie teigia, kad dauguma ofšorinių bendrovių yra registruotos Karibų jūros baseino bei Vakarų Europos valstybėse. Pažymėtina, kad pastaruoju metu minėtas zonas sparčiai vejsi ir JAV, kur kasmet registruojama keliasdešimt tūkstančių ofšorinių įmonių. Be šių regionų, labai sparčiai augančia ofšorinių jurisdikcijų zona laikomos Azijos bei Ramiojo vandenyno baseino valstybės. Kai kurių mokslininkų duomenimis, pusė pasaulio valstybių iš veiklos registracijos šalyje nevykdančių bendrovių arba renka labai mažus mokesčius, arba iš viso jų nerenka (Pennep, 1999).

Kiti autoriai rašo, kad iš viso pasaulyje šiuo metu ofšorines įmones galima registruoti beveik šimte ofšorinių centrų, tačiau taip pat pripažįstama, kad daugeliu atvejų šie centrai neturi viso tradicinių ofšorinių bendrovių bruožų rinkinio (Stungys ir kt., 2001).

Susidariusi palanki verslo aplinka turėjo didžiulės reikšmės ofšorinių centrų populiarumui. Jų teikiamomis paslaugomis pradėjo naudotis strateginę reikšmę turinčios pramonės šakos. Ši faktą, netiesiogiai rodantį stambių valstybių suinteresuotumą ofšorinių centrų klestėjimu priežastis, pastebėjo JAV žurnalas „Business & Commercial Aviation“. Čia pateikta informacija apie 2002 m. vasario mėnesį JAV surengtą aviacijos pramonės konferenciją ir parodą, kurioje buvo demonstruojamos diagnostinės ir automatinės kontrolės sistemos. Autorių teigimu, šias sistemas įsigijo viena ofšorinė bendrovė, besiverčianti techniniu aviacijos bendrovių aprūpinimu (Offshore Logistics Inc., 2002).

Šiuo metu Europos Sąjungai kuriant bendrą gynybos sistemą, kurią jau buvo bandyta įkurti dar 1954 m. ir kuri tų pačių metų rugpjūčio 30 d. buvo atmesta Prancūzijos nacionalinėje asamblėjoje, ši organizacinė struktūra turėjo būti vadinama Europos Gynybos Bendrija (EGB). Tik 2004 m. liepos mėnesį įsteigta Europos Gynybos Agentūra (EGA). Šiuo metu Europos Sąjungos karinės pajėgos yra kritikuojamos dėl jų pasenusios įrangos ir nemodernėjančios karinės technikos, ką aiškiai parodė karas Irake, labai aktualu žinoti, kokie ir per kokias bendroves bus vykdomi kariniai užsakymai moderninant Europos Sąjungos karinę techniką. Šiuo atveju būtent ofšorinės bendrovės gali vaidinti labai svarbų vaidmenį įsigyjant minėtą techniką. Juolab kad dažniausiai kariniai užsakymai sudaro valstybės paslaptį, o ofšorinių bendrovių veikla grindžiama informacijos apie bendrovės savininkus neatskleidimu.

Po Europos Sąjungos plėtos verslininkų veiklos apimtys per ofšorines bendroves iš esmės nepakito, tik pasikeitė sąrašas ofšorinių centrų, per kuriuos veikia verslininkai iš Europos Sąjungos. Tai leidžia daryti prielaidą, kad Europos Sąjungos valstybių verslininkų, dirbančių per ofšorinius centrus, mokesčių nepadaugėjo. Tokia Europos Sąjungos verslininkų veikla galbūt sudaro sąlygas ne tik teisėtai būdais planuoti mokesčių mokėjimą, bet ir naudotis ofšorinių centrų teikiamomis galimybėmis siekiant neteisėtai būdais išvengti mokesčių (Sutton, Payne, 1994). Kiti autoriai tiesiogiai nurodo, kad veikla per ofšorinius centrus gali būti susijusi su pinigų plovimu ir kad tai turėtų būti vienas svarbiausių Europos Sąjungos uždavinių sprendžiant šią problemą (Hakamies, 1999).

Taip pat pažymėtina, kad tarp ofšorinių centrų, kuriems žadama įvesti sankcijas, yra valstybių, nepriklausančių EBPO. Todėl, remiantis susidariusia situacija, galima daryti šias prielaidas:

1. EBPO priklausančios valstybės dėl ekonominių priežasčių yra suinteresuotos ofšorinių centrų skaičiaus mažėjimu, nes tada mažėja konkurencija ofšorinių centrų paslaugų rinkoje.
2. EBPO sudarytame ofšorinių centrų sąrašas yra ofšorinių centrų, kuriuose kai kurios teroristinės organizacijos gali legalizuoti neteisėtai būdais įgytas lėšas.
3. Minėtų ofšorinių centrų teritorijose yra įsteigtos ofšorinės bendrovės, finansuojančios teroristinius aktus, o jų veiklą keblu kontroliuoti. Tai siejama su 2001 metų rugsėjo 11 d. teroristiniais išpuoliais prieš JAV.
4. Kadangi tuo pačiu metu, kai Didžiosios Britanijos ministras pirmininkas Tonis Bleiras buvo atvykęs pas Rusijos prezidentą V. Putiną, FATF Rusiją išbraukė iš valstybių, neturinčių reikiamos teisinės bazės kovai su „nešvarių“ pinigų plovimu, sąrašą, daroma išvada, kad toks FATF poelgis gali būti siejamas su Didžiosios Britanijos ministro pirmininko Tonio Bleiro atvykimu bei JAV kongreso patvirtintu JAV prezidento Dž. Bušo karo prieš Iraką planu, nes Rusija iki tol laikėsi priešiškos JAV karui Irake pozicijos, o po T. Bleiro susitikimo su V. Putinu šio pozicija sušvelnėjo.

EBPO organizacijos veiklos postūmį į priekį rodo ir reguliariai kaupiama bei sisteminama informacija apie procesus, vykstančius pasaulyje, taip pat ir ofšorinių centrų, ekonomikoje.

G. Nicoletti, S. Scarpetta ir O. Boylaud teigia, kad Ekonominės plėtos ir bendradarbiavimo organizacijos duomenų bazėje yra daugiau kaip 1 100 įvairių įrašų, susijusių su kiekvienos valstybės, esančios EBPO nare, reguliavimo procesais (Nicoletti ir kt., 1999).

Išvados:

1. Nors oficiali Europos Sąjungos pozicija ofšorinių centrų atžvilgiu dėl jų vykdomos veiklos yra neigiama, kai kurios Europos Sąjungos valstybės joms priklausančiose teritorijose steigia ofšorinius centrus.
2. Lietuvos, kaip vienos iš Europos Sąjungos valstybių, verslininkams yra sudarytos palankios sąlygos vykdyti veiklą per JAV registruotus ofšorinius centrus.
3. Išnagrinėjus įvairių valstybių įstojimo į EBPO organizaciją laiką, galima daryti išvadą, kad į ją nariai priimami neatsižvelgiant į tai, ar valstybė prieš įstodama į EBPO organizaciją jau buvo įsteigusi ofšorinį centrą savo teritorijoje, ar ne.
4. Tarp ofšorinių centrų, kuriems žadama įvesti sankcijas, yra valstybės, nepriklausančios ekonominės plėtos ir bendradarbiavimo organizacijai. Be to, tokiu būdu gali būti mažinama konkurencija tarp ofšorinių centrų.

Raktažodžiai: ofšoriniai centrai, Europos Sąjunga.

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